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Testimony of Senate Democratic Leader Tom Daschle
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Congress Must Be a More Active Partner:
A Good-Faith Proposal for Resolving the Indian Trust Dispute

Good morning, Mr. Chairman, Mr. Vice Chairman, members of the Committee. Two weeks ago, tribal leaders from nearly every Indian Nation in America traveled to Washington for a meeting of the National Congress of American Indians. Their urgent plea to all of us was that the federal government work with Native people to find an honorable and equitable solution to the Indian trust fund dispute. This hearing is a first step in honoring that request. I thank the Chairman, Senator Campbell, and the Vice Chairman, Senator Inouye, for their leadership in scheduling it so quickly.

I represent South Dakota, home of the Great Sioux Nation. More than 30,000 men and women in South Dakota are Individual Indian Money account holders. Most are elders -- in their 60s, 70s, 80s and even 90s. Many have lived all their lives amid a kind of grinding poverty that most Americans do not even know exists in this nation. When their land is leased, it is usually for grazing rights. Those rights don't produce much income, but for many Indian trust account holders in South Dakota, it is half of their annual income.

Maida LeBeau is one of the 30,000 trust account holders in my state. She lives in Eagle Butte, on the Cheyenne River reservation. She is the matriarch of an extended family that includes more than 40 children. She considers them all her grandchildren. Last year, Mrs. LeBeau had planned to use a good part of her annual lease payment to buy Christmas presents for the children. She expected her check to arrive in October, as it has for several years. By December, there was still no check and no explanation. Mrs. LeBeau spent hours on the telephone trying to reach someone in the Office of Special Trustee who could help, but she could never get beyond the endless voicemail messages. So, in her words, "Christmas didn't come this year" for her grandchildren.

In early January, Ross Swimmer, the Special Trustee for American Indians, held a meeting on trust reform in Rapid City, one of five such meetings throughout the country. On January 13, Mrs. LeBeau drove more than three hours to get to that meeting. She then waited another eight hours as nearly 100 other account holders stood up and, one by one, described problems they were having with their accounts. Finally, after all that, Maida LeBeau got a few minutes to plead her case. Weeks later, after Mr. Swimmer's personal intervention, Mrs. LeBeau's check finally arrived -- which she appreciated.

Mr. Chairman, there are 300,000 Indian trust account holders in the United States. Most

of them don't have Maida LeBeau's strength. Many are in fragile health. They can't drive three hours to speak directly to the head of the Office of Special Trustee to resolve problems with their trust accounts. And they shouldn't have to.

The United States government made a commitment, through solemn treaty obligations, when it divided Indian lands in 1887, to hold those lands in trust, to manage them wisely, and to give any income from the sale or lease of the land to its Indian owners. Our government has never fulfilled that promise. The Indian trust has been so badly mismanaged, for so long, by Administrations of both political parties, that no one today has any idea how much money should even be in the trust -- let alone, how much is owed to individual account holders, and for what.

Ten years ago, Congress ordered the Department of Interior's Bureau of Indian Affairs to conduct a full and accurate accounting of the Indian trust funds. The Department ignored that directive. Seven years ago, in the face of growing frustration at the seeming inability or unwillingness of government leaders to come to grips with this problem, Elouise Cobell, of the Blackfeet Indian Nation, filed a federal lawsuit to compel the Department to follow Congress's directive. The Department has fought that lawsuit every step of the way. Last September, the judge in the Cobell case ordered the Interior Department to make a full and accurate historical accounting of all individual Indian trust accounts. Weeks later -- behind closed doors -- House Republican leaders, working with the Bush Administration, attached a rider to the 2004 Interior Appropriations conference report effectively putting the judge's order on hold for a year.

For years, Congress has deferred to the Executive branch to resolve the Indian trust dispute, yet the problems are no closer to being solved now than they were a decade ago, when Congress first directed the Interior Department to conduct an accounting of the trust. It is time for Congress to admit that this "hands off" approach is not working and accept our share of the responsibility for finding a timely and fair solution.

This morning, before this Committee, Chairman Tex Hall, president of the National Congress of American Indians, called on Congress to become a more active partner in the effort to broker a just and equitable solution to the trust management problem. He is right.

When I look at the long history of the trust management problem, I see three basic paths to its resolution. Congress, the Interior Department and the tribes, can work together, as co-equal partners, to fashion a workable solution that is agreeable to all three parties. We can seek a mediated solution to the problem. Or we can throw up our hands in despair and allow the issue to be resolved in the courts. These paths are not mutually exclusive; they are three distinct routes to the same goal.

I am here today to offer some specific suggestions for how I believe we can help move the trust management issue forward in a constructive way. These suggestions reflect discussions I have had with tribal chairs and tribal members in South Dakota, and with other leaders whose judgment I respect.

First: Congressional meddling in the Cobell case must end. Interventions such as the

rider blocking Judge Lamberth's ruling do not simply delay justice for Indian trust account holders, they undermine the delicate balance of powers that is at the heart of our system of government.

Second: As soon as possible, this Committee should initiate three-way discussions involving Congress, the Administration and tribal leaders to search for a consensus solution to the trust dispute.

I know that the Interior Department maintains that its reorganization plan has been shaped, at least in part, by "listening sessions" it held in Indian Country. Yet, the fact remains that tribal leaders around the country do not accept the premise that those meetings represented true consultation. And neither do I. You heard Chairman Hall say that tribal leaders do not believe that their views are reflected in the BIA trust reorganization plan. The Committee has also received written testimony from Lower Brule Chairman Michael Jandreau, who served on the BIA-Tribal Task Force on trust reform, in which he says that the lack of "meaningful involvement [of] and input from tribal leadership" and the failure by the federal government to recognize "obvious treaty obligations" are contributing to the impasse.

This problem cannot be solved by Interior Department officials simply re-drawing lines on a BIA organizational chart. The search for a settlement must include real, meaningful and ongoing consultation with tribes and tribal leaders. It is, after all, Indian people's money.

Congress should become a more active partner in the efforts to broker such a consensus solution. I suggest that putting on the table the Interior Department's plan, the Great Plains Regional Proposal for Trust Reform outlined today by Chairman Harold Frazier, and the bill introduced by Senators McCain, Johnson and I, S. 1459, would be a good place to start.

At the same time, all parties should seriously explore the possibility of a mediated settlement. I commend Chairman Campbell and Vice Chairman Inouye for the leadership they have shown in beginning the mediation process. It is my view that, in order for the mediation process to be effective, it should be headed by leaders of great stature, who are experienced in difficult negotiations, and whose integrity is unquestioned.

The Indian trust dispute is not a partisan issue, and resolving it must not be viewed as a political effort. For that reason, I strongly urge that the mediation process be co-chaired by a prominent Republican and a prominent Democrat. I believe there are many other distinguished Americans who would be honored to be able to help heal this deep and historic wound. Involving them in the mediation effort would send a strong signal to the tribes -- and indeed, to the world -- about the commitment of our government to resolve this matter fairly. Again, I thank the Chairman and Vice-Chairman for their leadership in beginning this important option.

Finally, Congress should begin budgeting now for the eventual resolution of this dispute. Last year, I introduced the Indian Payment Trust Equity Act (S. 1540), which would create a \$10 billion fund to begin making payments to trust holders who have received an objective accounting of their trust assets. The fund could be expanded, if necessary.

I ask that the Committee begin now to look seriously at that proposal and perhaps others. Many of the people who are owed money are elders. They cannot wait years to learn their account balances, and years more to receive their money. They don't have that many years. Maida LeBeau should not be forced to worry about her next Christmas. There should be a mechanism in place to issue regular payments to account holders in case negotiation or mediation fails to produce a consensus solution.

Nearly a year ago, the distinguished Chairman and Vice Chairman of this Committee wrote a letter to the parties in the Cobell case expressing their concern that continuing the litigation would only further delay justice for trust account holders. I'd like to read one paragraph from that letter:

"... we believe that the most effective and equitable way to resolve this threshold matter is to engage the services of an enhanced mediation team that will bring to bear trust, accounting and legal expertise to develop alternative models that will resolve the Cobell case fairly and honorably for all parties. ... If, with a reasonable amount of time, there is no progress made in such a resolution, we intend to introduce legislation that will accomplish the goal of resolving the Cobell matter in a mediated fashion.."

We have given the Executive branch more than a reasonable amount of time to show progress. It has been a decade since Congress ordered the Interior Department to provide an accurate accounting of Indian trust assets. Far from complying with that order, the Department has gone to extraordinary lengths to frustrate it.

The time has come for Congress to become a more active partner in the search for a just and equitable settlement. Again, I thank the Chairman and Vice Chairman, and the members of the Committee, for holding this hearing. I look forward to working with the Committee, the Administration and the tribes to find a solution that all parties can support.

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